Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Alaska Communications Systems	)	WC Docket No. 10-90
	)	
Petition for Waiver of Section 54.313(c) of the	)	WC Docket No. 05-337
Commission's Rules	)	

PETITION FOR FLEXIBILITY IN THE USE OF FROZEN HIGH-COST SUPPORT IN THE ACS ILEC SERVICE AREAS

Leonard A. Steinberg
General Counsel and Corporate Secretary
Richard R. Cameron
Assistant Vice President & Senior Counsel
ALASKA COMMUNICATIONS SYSTEMS GROUP, INC.
600 Telephone Avenue
Anchorage, Alaska 99503
(907) 297-3000

Karen Brinkmann
Robin Tuttle
KAREN BRINKMANN PLLC
2300 N Street, NW
Suite 700
Washington, D.C. 20037
(202) 365-0325
KB@KarenBrinkmann.com

Counsel for ACS

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

ACS comprises four incumbent local exchange carriers ("ILECs") serving six study areas in Alaska, five of which are considered "rural" under the Communications Act, and all of which include locations unserved by broadband. As an elective price cap carrier, ACS receives frozen high-cost loop support ("HCLS"), Interstate Common Line Support ("ICLS") and Local Switching Support ("LSS"), all of which must be repurposed toward broadband in areas substantially unserved by an unsubsidized competitor beginning in 2013. ACS is incapable of complying with this requirement of Section 54.313(c) of the Commission's rules while continuing to deploy, maintain and operate public switched local exchange and exchange access services at rates deemed affordable by regulators. ACS therefore requests a waiver of Section 54.313(c) in either of two ways: First, ACS seeks a waiver to exclude from the repurposing requirement those portions of their frozen high-cost support derived from ICLS and LSS, and to allow ACS flexibility to spend the remaining portion of frozen high-cost support, HCLS, in any of the service areas of the ACS ILECs, provided the support is used to build and operate broadband-capable networks in areas substantially unserved by an unsubsidized competitor. Alternatively, ACS requests waiver of the requirement that frozen high-cost support be demonstrably used in areas substantially unserved by an unsubsidized competitor. Waiver would serve the public interest by encouraging efficient use of limited high-cost support to maximize broadband availability without creating a conflict within the Commission's own rules and policies favoring universal service and affordable rates. Moreover, compliance with the rule as written is impossible for ACS. Waiving the rule to the limited extent requested here therefore would provide necessary and equitable relief and harmonize the Commission's policies.

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Alaska Communications Systems ("ACS")[1] hereby requests that the Commission waive Section 54.313(c) of its rules, 47 C.F.R. § 54.313(c), to the extent necessary to permit ACS to use frozen high-cost support under Phase I of the Connect America Fund ("CAF") more flexibly than currently permitted under the Commission's rules. Specifically, ACS requires a waiver of the requirement to spend a substantial portion of frozen high-cost support to build and operate broadband-capable networks in areas that are substantially unserved by an unsubsidized competitor. In 2013, one-third of frozen high-cost support must be spent in this manner, in 2014 two-thirds, and in subsequent years all frozen high-cost support must be spent in this manner, unless and until CAF Phase II is implemented and CAF Phase I support is phased out.[2]

1 In this proceeding, ACS signifies the four incumbent local exchange carrier ("ILEC") subsidiaries of Alaska Communications Systems Group, Inc., ACS of Alaska, LLC, ACS of Anchorage, LLC, ACS of Fairbanks, LLC, and ACS of the Northland, LLC.

2 *Connect America Fund*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶¶148-150 (2011) ("*USF/ICC Transformation Order*"). *See id.* at ¶180 & n. 294 for a discussion of the multi-year transition from CAF Phase I to Phase II.

I. Summary of Requested Relief

The relief requested by ACS could be effectuated in one of two ways. If the portion of frozen high-cost support that is derived from Interstate Common Line Support ("ICLS") and Local Switching Support ("LSS") were excluded from the broadband spending requirement under Section 54.313(c), and if ACS were given flexibility to spend the broadband-repurposed portion of frozen high-cost loop support ("HCLS") in any of the service areas of the ACS ILECs that are substantially unserved by an unsubsidized competitor, ACS could comply with the Commission's remaining requirements. Alternatively, if ACS were given flexibility to use frozen high-cost support throughout its service areas, not only in areas substantially unserved by an unsubsidized competitor, ACS could comply with the Commission's remaining requirements governing frozen CAF I support. In the absence of the waivers requested herein, ACS will be unable to comply with Section 54.313(c); moreover, enforcement of the rule would lead to inefficient results and threaten ongoing service to ACS customers, contrary to Commission policies. A waiver of the Commission's rule would better achieve the purpose of the rule and avoid undue burden to ACS and its customers.

II. Background

A. Frozen High-Cost Support In CAF Phase I

The Commission adopted comprehensive changes to its universal service regime in the *USF/ICC Transformation Order*. The Commission adopted a budget of $1.8 billion for its CAF Phase II regime for price cap ILECs, intended to target voice and broadband infrastructure and services in unserved and underserved areas.[3] Until that regime is put in place, the Commission provided for transitional high-cost support in two forms: frozen high-cost support and

[3] *See USF/ICC Transformation Order*, ¶ 156.

incremental CAF support. These CAF Phase I mechanisms were in place throughout calendar year 2012 and remain operative in 2013. Price cap carriers may choose to accept incremental CAF Phase I support and the obligations associated with that support. However, the new obligations associated with frozen high-cost support are not optional.

Frozen high-cost support is the total amount of support that previously was received by price cap ILECs, in the form of HCLS, ICLS and LSS, as well as High-Cost Model Support ("HCMS"), Interstate Access Support ("IAS"), and Safety Net Additive support ("SNA").[4] Under the Commission's rules, HCLS, HCMS and SNA were used to offset the costs that ILECs incur in building and maintaining networks used to provide local exchange and exchange access services, and to help ensure that rates for those services remain affordable; IAS, ICLS and LSS were intended to permit ILECs to continue to recover their interstate costs while offsetting reductions in access charges.

In the *USF/ICC Transformation Order* the Commission established that, beginning in 2013, recipients of frozen high-cost support would be required to spend increasing percentages of this support to build and operate broadband-capable networks in areas that are substantially unserved by an unsubsidized competitor.[5] Specifically, unless CAF Phase II is implemented first, the FCC's rules require price cap ILECs to certify that they used at least *one-third* of all frozen high-cost support received in 2013 for broadband (at parameters meeting the Commission's standards);[6] that they used at least *two-thirds* of all frozen high-cost support received in 2014 for broadband in the same manner;[7] and in subsequent years *all* frozen high-

4 *See* 47 C.F.R. §54.5.
5 *See* 47 C.F.R. § 54.313(c).
6 *See* 47 C.F.R. § 54.313(c)(2).
7 *See* 47 C.F.R. § 54.313(c)(3).

cost support must be used accordingly.[8] These obligations are not optional; as noted above, they apply to all price cap carriers, regardless of local circumstances. Moreover, the Commission adopted numerous additional requirements governing CAF Phase I, including a per-line support limit,[9] extensive annual reporting requirements,[10] Tribal coordination requirements,[11] and a rate floor.[12]

B. The ACS ILECs' Frozen CAF Phase I Support And Broadband Spending Amounts

Four ACS LECs provide local exchange and exchange access services in six study areas, five of which are rural, all in the state of Alaska. Prior to their conversion to price cap regulation in 2009, the ACS ILECs all were subject to cost-based rate-of-return regulation in the interstate jurisdiction, and thus received HCLS, ICLS and LSS, which was frozen upon conversion.[13] Legacy HCLS was intended to offset the costs of the local network in high-cost areas, and ICLS and LSS were intended to permit ILECs to recovery their interstate revenue requirement by offsetting mandatory reductions in interstate access charges.[14]

The ACS ILECs receive frozen high-cost support based on frozen 2011 amounts of legacy HCLS, ICLS, and LSS.[15] ACS received approximately $19.5 million is frozen high-cost support in 2012, and expects to receive nearly the same amount in 2013, approximately $19.2 million after true-up (unless CAF Phase II is implemented before the end of the calendar year).

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8 *See* 47 C.F.R. § 54.313(c)(4).

9 47 C.F.R. §54.312(a).

10 47 C.F.R. §54.313(a).

11 47 C.F.R. §54.313(a)(9).

12 47 C.F.R. §54.318.

13 *See ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and Acs of the Northland, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, Order, 24 FCC Rcd 4664 (2009) ("*ACS Price Cap Conversion Order*").

14 *See USF/ICC Transformation Order*, ¶¶ 152, 219, and 253.

15 *See USF/ICC Transformation Order*, ¶ 133 and note 212.

This means that, for 2013, ACS will be required to demonstrate that it repurposed more than $6.4 million of its frozen high-cost support to build and operate broadband-capable networks in areas that are substantially unserved by an unsubsidized competitor, of which approximately $4.92 million is associated with legacy ICLS and LSS. Assuming the same amount of frozen CAF Phase I support for 2014, the amount of broadband spending in areas substantially unserved by an unsubsidized competitor would increase to more than $12.8 million, of which approximately $9.84 million is associated with legacy ICLS and LSS. Of the full support amount of $19.2 million, approximately $14.77 million is derived from the ICLS and LSS legacy support, which would be required to be devoted entirely to broadband in 2015.[16]

Without a waiver of the Commission's rule Section 54.313(c), legacy high-cost support will be required to be spent twice: first, toward recovery of the interstate portion of the ACS ILECs' investments already made in the affected study areas, and again in required broadband spending. Thus, in addition to the incremental Phase I support amounts accepted by ACS to increase broadband availability in Alaska, the ACS ILECs now are expected to use a substantial portion of their frozen high-cost support to build and operate broadband-capable networks in areas that are substantially unserved by an unsubsidized competitor, all while continuing to provide the existing telecommunications services that they are required to offer throughout their study areas. ACS believes this is impossible for it to do.

16 Declaration of Ruth Willard In Support of ACS Frozen High-Cost Waiver Petition ("Willard Declaration"), ¶¶4-7.

III. GOOD CAUSE EXISTS TO GRANT ACS A PARTIAL WAIVER OF SECTION 54.313(C)

The Commission may waive a rule for good cause[17] where, due to special circumstances, deviation from the rule would better serve the public interest and the Commission's purposes than strict enforcement of the rule.[18] The Commission may take into account consideration of hardship, equity, or more effective implementation of overall policy on an individual basis.[19] As demonstrated herein, the relief requested by ACS is necessary to prevent undue hardship to ACS and its customers, to better effectuate the Commission's universal service goals, and to ensure that the Commission's broader policies are not undermined by the enforcement of Section 54.313(c) in ACS's service areas. ACS explains below why the Commission should not enforce Section 54.313(c) in ACS's case. In Section IV, ACS discusses two alternative forms of relief that, if granted, would permit ACS to comply with the remaining CAF Phase I rules.

ICLS and LSS were intended to permit ILECs to recovery their interstate revenue requirement by offsetting mandatory reductions in interstate access charges.[20] The Commission has ordered that these legacy support regimes be frozen during the transition to the CAF Phase II regime, but it simultaneously is forcing price cap ILECs to repurpose frozen support, requiring that it be used for building and operating broadband networks in areas that are substantially unserved by an unsubsidized competitor. The Commission's rules thus appear to require two competing uses of the same funds – investing in broadband networks in areas substantially unserved by an unsubsidized competitor, and supporting existing networks and services throughout the price cap ILECs' study areas. ACS respectfully submits that compliance is

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17 47 C.F.R. § 1.3.

18 *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

19 *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

20 *See USF/ICC Transformation Order*, ¶¶ 152, 241, 253, and 257.

impossible. The repurposing of frozen ICLS and LSS in this manner would significantly harm both the ACS ILECs and their customers.

Of the $19.2 million in frozen CAF Phase I support that the ACS LECs will receive for 2013, the $14.77 million representing the ICLS and LSS portion of frozen CAF Phase I support accounts for approximately 40% of the ACS ILECs' total interstate revenue.[21] The ACS ILECs cannot simply forego this revenue just because the Commission has decided to repurpose it for broadband networks in targeted areas. This revenue is still needed for its original purpose, supporting voice and data telecommunications services required to be offered by the ACS ILECs to all customers throughout their study areas at rates, terms and conditions deemed just and reasonable. ACS will not be able to recover investments already made, maintain its existing networks, and continue providing telecommunications services at affordable rates without replacement revenue.

Nor will ACS be able to make up the revenue being diverted to broadband through other interstate revenues. ACS's subscriber line charges ("SLCs") already are at the cap except for multi-line business ("MLB") customers.[22] If one-third of frozen CAF Phase I support derived from legacy ICLS is required to be spent on broadband in areas substantially unserved by an unsubsidized competitor in 2013, ACS would have the option to increase MLB SLCs between $0.04 and $1.31 per line to recover a portion of its common line costs, but this would only yield increased revenues of $145,000, not enough make up the difference. ACS estimates a revenue

21 Willard Declaration, ¶5.

22 As a condition of their conversion from pooling rate-of-return carriers to non-pooling price cap carriers, the ACS ILECs agreed not to raise the SLC for non-primary residential lines, which then were capped at $6.50, whereas other price cap carriers may charge up to $7.00 in SLCs on such lines. Thus, ACS has only two SLC rates, the MLB rate and the rate for residential and non-MLB customers. *See ACS Price Cap Conversion Order,* n. 37.

shortfall of approximately $3,495,000 in 2013 *after* raising the SLCs to the cap.[23] Moreover, after SLCs reach the cap, no further increases are permitted. Thus, if CAF II is not implemented before the start of 2014, ACS will face a more severe revenue shortfall in 2014, when the broadband spending requirement doubles to two-thirds of frozen high-cost support.

The following impact on the ACS ILECs' SLCs would be expected:

	Residential & Single-Line Business SLC			**Multi-Line Business SLC**		
Study Area	**2012 SLC**	**SLC After 1/3 Reduction**	**Change**	**2012 SLC**	**SLC After 1/3 Reduction**	**Change**
Anchorage	6.50	6.50	none	8.95	9.20	+0.25
Sitka	6.50	6.50	none	9.20	9.20	none
Glacier State	6.50	6.50	none	9.08	9.20	+0.12
Greatland	6.50	6.50	none	7.89	9.20	+1.31
Juneau	6.50	6.50	none	9.03	9.20	+0.17
Fairbanks	6.50	6.50	none	9.16	9.20	+0.04

In addition, if one-third of frozen CAF Phase I support derived from legacy LSS is required to be spent on broadband in areas substantially unserved by an unsubsidized competitor in 2013, ACS would have a revenue shortfall of $1.28 million.[24] As with ICLS, the deficit would worsen in 2014.

Thus, even increasing MLB SLCs to the maximum, the ACS ILECs would not make up the revenue shortfall caused by the broadband repurposing of frozen CAF Phase I support associated with ICLS and LSS, under Section 54.313(c) of the Commission's rules. One-third of the 2013 frozen ICLS and LSS revenue is $4.92 million, approximately $3.64 million for frozen

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23 Willard Declaration, ¶10.

24 *Id.*

ICLS and approximately $1.28 million for frozen LSS. Increased revenue from SLCs would not make up for repurposed ICLS support. ACS faces a shortfall of approximately $4,779,000 in 2013 alone.

Price cap ILECs have no option to accept all, some or none of their allotted frozen high-cost support under the mandatory broadband spending terms. In dedicating one-third of frozen ICLS and LSS to broadband in areas substantially unserved by an unsubsidized competitor, ACS could be forced to increase end-user rates to the extent permitted, but still might be unable to maintain legacy services or raise future capital for investment in its networks.

Unlike incremental CAF Phase I support, frozen high-cost support represents committed funds, not new support that can be dedicated to broadband deployment in targeted areas under parameters the Commission dictates. Rather, frozen CAF Phase I support is the same funding that has been part of the total revenues allowing price cap carriers to provide regulated voice and broadband services – services they are required to provide – at current rates. These funds, in effect, reflect investment already made and funds already committed. Thus, for the Commission now to repurpose these funds to specific target locations, on a mandatory basis, denies ACS the use of funds that were budgeted for and are necessary to the support of regulated end-user services at current prices (as well as access services at declining prices). Absent a waiver of the FCC's rule, ACS stands to lose almost $4.779 million in committed revenue in 2013 or be forced to raise rates for existing regulated services, to the extent permitted, to recover amounts repurposed for broadband. Where raising rates is not possible, ACS will have no opportunity to earn a reasonable return on investment, and future investment will be affected.

Without means for recovering the amounts already invested, whether from continued availability of frozen support or from increased end-user rates, a downward spiral may begin, and ACS may not be able to maintain, much less upgrade, its network. ACS recently installed a new switch and extended service to a subdivision in Klawock; the cost of this network upgrade, which was necessary to ensure continued availability of public switched voice service to about 400 customers, exceeded $750,000 (including equipment and installation).[25] Such facilities do not support broadband, and thus do not appear eligible for CAF Phase I support, yet they are necessary to maintain local exchange and exchange access services in isolated Alaska Bush communities. Withdrawal of support for public switched voice services would threaten the delivery of essential services in these areas.

Waiver of the broadband spending requirements under Section 54.313(c) for frozen high-cost support is necessary to avoid harm to consumers. ACS's investment has been made, and its operations expenses have not changed, so either ACS will need to increase its end-user rates or it will not be able to maintain the services provided at the same level.

Without full use of the frozen support, or other revenue to replace the repurposed support, that has been used to maintain and operate voice networks in the highest cost areas served by ACS, the company also could find itself incapable of complying with state requirements governing ILEC services. In eliminating the support that helped keep ACS's rates affordable, but continuing to subject ACS to state regulatory requirements, the FCC would be forcing ACS to operate to its economic detriment. Therefore, to the extent that the Commission intends broadband to supplant traditional local exchange and access services, it ought to change its rules and preempt state rules so that carriers may discontinue the local exchange and exchange access

25 Willard Declaration, ¶10.

services no longer supported by federal high-cost funding. The Commission has declined to do this, leaving price cap carriers such as the ACS ILECs in an untenable position.[26]

IV. THE FCC SHOULD GRANT ACS FLEXIBILITY TO USE FROZEN SUPPORT WHERE IT IS NEEDED

ACS seeks relief from the requirements under Section 54.313(c) of the Commission's rules that, beginning with calendar year 2013, price cap carriers annually certify that they used substantial portions of frozen high-cost support to build and operate broadband networks in areas substantially unserved by an unsubsidized competitor. ACS believes that effective relief could be granted in either of two ways. Both alternatives are presented below.

First, effective relief would be granted if the Commission were to exclude ICLS and LSS from the requirements of Section 54.313(c), and granted greater flexibility for ACS to use HCLS within any of its four ILEC service areas and six study areas. The rule appears to require a certification *from each individual price cap ILEC* ("price cap carriers that receive frozen high-cost support…shall provide…."). Thus, the rule does not appear to permit ACS to shift frozen high-cost support from one ACS ILEC to another based on which ILEC can most efficiently use the support to deploy and operate broadband in unserved locations. Greater flexibility is necessary and, ACS submits, desirable from the perspective of maximizing broadband coverage, if one ILEC service area has few locations unserved by an unsupported competitor, while a sister ILEC's service area has many such locations. ACS therefore seeks a waiver of the rule to the extent necessary to permit it to shift frozen HCLS among its individual ILECs, and between study areas within a single ILEC, for purposes of complying with this rule, provided the support is used within the ACS family of ILECs to build and operate broadband-capable networks in

26 *See USF/ICC Transformation Order,* ¶ 75.

areas served by the ACS ILECS that are substantially unserved by an unsubsidized competitor. Granting such a waiver is in the public interest, because it will allow ACS to use its frozen HCLS to maximize broadband availability among all of the customers ACS serves in the state. In contrast, forcing the company to spend predetermined amounts in specific ILEC service areas would result in fewer locations being served at far higher per-location costs, in order to comply with the broadband spending obligation.

As discussed above, the new requirements for use of frozen high-cost support under Section 54.313(c) are not optional. Price cap ILECs receive frozen high-cost support because it is a necessary part of their interstate cost recovery, yet they have been made subject to significant new broadband spending requirements beginning this year. Based on a preliminary analysis of locations within each ACS ILEC service area that are "unserved by any unsubsidized competitor," ACS expects that in 2013 at least one of its ILECs, ACS of the Northland, may be unable to spend one-third of its allotted frozen high-cost support on broadband in such unserved locations, whether or not the Commission grants the relief described above to exclude frozen LSS and ICLS from the one-third spending requirement. That is because ACS of the Northland, in its Glacier State study area, receives HCLS but its service territory purportedly is "served" in some parts by an unsubsidized competitor. If granted flexibility to use the support elsewhere, ACS could meet the one-third spending requirement by investment in broadband in one of the other ACS ILECs' service territories. In 2014, the problem will become even more acute – if CAF Phase II still has not been implemented and the repurposing requirement increases to two-thirds of frozen high-cost support, ACS expects that three of its four ILECs will be unable to comply with the requirement. The Commission therefore should grant a waiver to exclude ICLS and LSS from the requirement to spend frozen high-cost support to build and operate broadband in areas substantially unserved by an unsubsidized competitor, and permit ACS flexibility to use the remaining frozen support, HCLS, to build and operate broadband in areas substantially unserved by an unsubsidized competitor in any of its ILECs' service territories.

Alternatively, ACS requests a waiver of the requirement under Section 54.313(c) to use frozen high-cost support in areas substantially unserved by an unsubsidized competitor. As explained above, frozen high-cost support is derived from legacy support that helps keep services available and rates affordable throughout the six ACS study areas. These legacy programs have permitted ACS to extend its networks to the most challenging service territories in the nation, to provide essential connectivity and high-quality voice services throughout its service areas, and even to deploy high-speed broadband in some areas. As the Commission has acknowledged, however, additional high-cost support is necessary for universal broadband deployment. It is expected that, with CAF Phase II and the other programs under development following the *USF/ICC Transformation Order*, universal broadband will become achievable. That was never the expectation with the limited amount of support provided under CAF Phase I, however – the Commission acknowledged that the modest amount of incremental support budgeted for this transitional phase would only "jump start" the broadband build-out it was hoping to achieve over the long term.[27] In short, the Commission should not demand that ACS shift essential funding away from its existing operations merely to achieve a short-term objective. If the Commission grants the flexibility requested herein, ACS could continue to support local voice and broadband

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27 *See, e.g., USF/ICC Transformation Order,* ¶127 ("More than 83 percent of the approximately 18 million Americans who lack access to fixed broadband live in price cap study areas. As a first step to delivering robust, scalable broadband to these unserved areas, the first phase of the CAF will provide the opportunity for price cap carriers to begin extending broadband service to hundreds of thousands of unserved locations in their territories.") (footnote omitted).

services for all its customers, even while it complies with the Commission's remaining requirements governing frozen CAF I support.

Moreover, requiring that ACS demonstrate it is using frozen CAF I support in locations "substantially unserved by an unsubsidized competitor" poses a substantial hardship for ACS. ACS has invested substantial resources in developing the capability to map areas that are served and unserved within the meaning of the Commission's rules, including identifying locations served by competitive fixed terrestrial voice and broadband providers in ACS study areas. These efforts are ongoing, but ACS is a small company facing vigorous competition in an extremely challenging service area. In the absence of a waiver, ACS will be required to divert operational resources to demonstrate that it is using frozen high-cost support in areas specifically deemed unserved by an unsubsidized competitor. For the reasons stated herein, the cost of this requirement outweigh the benefits in ACS's case.

The Commission should not insist on enforcing a rule when a company is, through no fault of its own, incapable of compliance. Grant of the limited waiver requested herein would allow ACS to decide where frozen high-cost support can be most efficiently deployed among several ILECs all serving customers in Alaska. Granting relief in one of the two forms requested herein will allow ACS to make maximum use of limited CAF Phase I resources to efficiently provide voice and broadband service in high-cost areas.

V. Conclusion

Waiving the Commission's rule as requested herein would be equitable; it would further the FCC's goal of promoting broadband deployment while permitting a reasonable opportunity for the ACS LECs to maintain existing services for their customers. Absent a waiver allowing ACS to spend the broadband repurposed frozen support where it is most needed, it will be impossible for the ACS LECs to comply with Section 54.313(c). The Commission's universal service goals will not be met because existing voice services will no longer be affordable as end-users will be forced to pay higher rates, or ACS will not be able to support existing services, or both. A waiver of Section 54.313(c) is appropriate to prevent undue hardship to ACS and its customers and to better serve the Commission's universal service policies. Prompt action is requested on this petition as ACS already is undertaking expenditures to satisfy the requirements of Section 54.313(c).

Respectfully submitted,

Leonard A. Steinberg
General Counsel and Corporate Secretary
Richard R. Cameron
Assistant Vice President & Senior Counsel
ALASKA COMMUNICATIONS SYSTEMS GROUP, INC.
600 Telephone Avenue
Anchorage, Alaska 99503
(907) 297-3000

Karen Brinkmann
Robin Tuttle
KAREN BRINKMANN PLLC
2300 N Street, NW
Suite 700
Washington, D.C. 20037
(202) 365-0325
KB@KarenBrinkmann.com

Counsel for ACS

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